



STATE OF ARKANSAS

Office of the Attorney General

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Opinion No. 94-228

August 17, 1994

The Honorable Charles Whorton, Jr.
State Representative
Route 5, Box 2242
Huntsville, Arkansas 72740

Dear Representative Whorton:

This is in response to your request for an opinion concerning whether the City of Marshall may use its share of the proceeds derived from a one percent (1%) countywide sales and use tax for any other purpose than that described in the ballot title regarding the tax, as approved by the voters of Searcy County in 1985. In your correspondence, you state that the City of Marshall established a city fund, labeled the "Solid Waste Fund," into which it deposits its share of the proceeds from the sales and use tax, as well as fees collected by the city from businesses for solid waste disposal. Thus, the monies from the sales and use tax are not kept separately, but rather are co-mingled with the solid waste fees collected by the city in the "Solid Waste Fund." You also note that, at times, the Solid Waste Fund has contained monies in excess of the amount needed for solid waste disposal and that the Marshall City Council, at a meeting earlier this year, voted to buy a car for use by the Marshall Police Department and paid for the car using monies from the Solid Waste Fund. With respect to this matter, you have asked for an opinion as to whether the City of Marshall may spend money from the "Solid Waste Fund" for any other purpose than that set out in the sales and use tax referendum, as approved by the voters of Searcy County in 1985.

With regard to your question, it is my opinion that the proceeds of the sales and use tax remitted to the City of Marshall, which are deposited in the city's "Solid Waste Fund," may be used only for the purposes set out in the ballot title. The


Searcy County Quorum Court Ordinance providing for the levy of the one percent (1%) sales and use tax (a copy of which was submitted with your request) provided that the ballot title to be submitted to the voters of Searcy County was to read as follows: "FOR ADOPTION OF A ONE PERCENT SALES AND USE TAX WITHIN SEARCY COUNTY, TO BE USED FOR SOLID WASTE MANAGEMENT, ROAD EQUIPMENT AND ROAD MATERIALS."¹ The ordinance also indicates that the tax was being levied pursuant to A.C.A. § 26-74-207, which in 1985 provided for a one percent countywide sales and use tax for capital improvements. Arkansas Code Annotated § 26-74-208(c), regarding the ballot title for such a tax, states that "[t]he ballot may also indicate designated uses of the revenues derived from the sales tax and, if the tax is approved, the proceeds shall only be used for the designated purposes." That is the case in this instance, and therefore, proceeds from the tax, in my opinion, may only be used for the purposes stated in the ballot title (i.e., solid waste management, road equipment and road materials). This result is also consistent with Article 16, § 11 of the Arkansas Constitution, and the established rule that revenues arising from a tax levied for one purpose cannot be diverted to another purpose. Page v. Alexander, 206 Ark. 479, 177 S.W.2d 415 (1943); Special School District v. Sebastian County, 277 Ark. 326, 641 S.W.2d 702 (1982). See also Ops. Att'y Gen. 93-387, 88-084, and 86-058. In order to assure that monies derived from the tax are used only for the purposes described in the ballot title, it may be that the monies should be deposited in a separate fund and not co-mingled with revenues derived from other sources. Finally, if the ballot title had not designated the use or purpose of the tax, I assume that the cities in Searcy County would not have been limited in their use of the funds, other than by the provision that the funds could be used "for any purpose for which the ... city general funds may be used." A.C.A. § 26-74-214(c). That is not, however, the case in this instance.

¹ See also Searcy County Resolution No. R-85-02, which was submitted with this request and which recommends the distribution of revenues derived from a one cent countywide sales and use tax if said tax is approved by the voters: the order of priority for distribution of revenue derived from tax is as follows: 1) Solid Waste Management System, 2) Road Equipment, and 3) Road Material. The purpose of the tax is also alluded to in this Resolution, as the Resolution states "[w]hereas, Searcy County and the cities and towns within Searcy County face a potential financial crisis due to economic conditions affecting financial assistance from state and federal sources which may result in a loss or decrease in certain services...."

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The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General Nancy A. Hall.

Sincerely,



WINSTON BRYANT
Attorney General

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